Supreme Court, U.S.
FILED
NOV 16 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

Nos. 669, 680-685, 691, 692

MUNICIPAL DISTRIBUTOR GROUP, ET AL., *Petitioners,*

v.

FEDERAL POWER COMMISSION, ET AL.

REPLY OF MUNICIPAL DISTRIBUTOR GROUP, PETITIONER IN NO. 669, TO SUPPLEMENTAL STATEMENTS

REUBEN GOLDBERG
LEO J. STEFFEN, JR.
1250 Connecticut Avenue
Washington, D. C. 20036

GEORGE E. MORROW
Union Planters National Bank Bldg.
Memphis, Tennessee 38103

CHARLES F. WHEATLEY, JR.
Watergate Office Building
2600 Virginia Avenue
Washington, D. C. 20037

Attorneys for Municipal Distributor Group

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

Nos. 669, 680-685, 691, 692

MUNICIPAL DISTRIBUTOR GROUP, ET AL., *Petitioners,*

v.

FEDERAL POWER COMMISSION, ET AL.

REPLY OF MUNICIPAL DISTRIBUTOR GROUP, PETITIONER IN NO. 669, TO SUPPLEMENTAL STATEMENTS

The so-called "Settlement Proposal" filed with the Federal Power Commission on November 6, 1970, by the United Distribution Companies,[1] which admittedly[2]

[1] A number of the distributors comprising the United Distribution Companies are members of natural gas pipeline systems having a stake in higher prices for natural gas production by reason of their important ownership of, and pecuniary interest in, natural gas production properties.

[2] See Supplemental Statement in No. 691 at page 2 and the Commission's Supplemental Memorandum at page 2.

is not supported by all parties to the Southern Louisiana Area Rate Proceedings and has not yet been considered by the Commission, emphasizes, rather than diminishes, the importance of the petition for a writ of certiorari of the Municipal Distributor Group and the necessity for an immediate decision by this Court of the questions presented by that petition, if the primary aim of the Natural Gas Act—protection of gas consumers from exploitation at the hands of natural gas producers and natural gas pipeline companies—is to be realized. *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610.

The "Settlement Proposal" would, if approved by the Commission, permanently revise the just and reasonable rates prescribed by the Commission in Opinions and Orders Nos. 546 and 546A, which were affirmed by the court below, and would deprive consumers of the refund of $375 [illegible] of charges found by the Commission to be excessive. Supporting the United Distribution Companies' motion for promulgation of the settlement proposal, the Staff of the Commission has just represented to the Commission:

> ... The resolution of all issues in the Southern Louisiana area necessarily required consideration of Dockets Nos. AR 61-2, *et al.*. Although the Commission has already issued orders in those proceedings, the Court of Appeals for the First Circuit has given the Commission authority to reopen any part of its orders that circumstances require be reopened. (Italics supplied)

And the Commission itself in its Supplemental Memorandum filed in this Court admits (p. 3) that "some of the issues raised here also underly the proposed

settlement", thus putting to rest once and for all the suggestion of prematurity contained in briefs in opposition to the petition for a writ of certiorari of the Municipal Distributor Group.

Moreover, contrary to the contentions of petition at No. 691 (Supp. Statement, p. 2) and of the Commission (Supp. Memo., p. 3), the grant of the Municipal Distributor Group's petition will not impede resolution of producer rate issues. Rather, instability and uncertainty will remain for years if the questions presented by the petition of the Municipal Distributor Group are not decided at this time. For upon approval of the "Settlement Proposal" by the Commission, questions respecting the validity of the retroactive revision of the rates, and denial of refunds to consumers, inherent in the "Settlement Proposal," will be submitted to a United States court of appeals for the appropriate Circuit for review and, thereafter, either on petitions of producers or consumers, will be back before this Court after a delay of a year or more, during which time instability and uncertainty will prevail.

If the petition of the Municipal Distributor Group were premature before, which it was not, it is not premature now, and uncertainty and delay can only be avoided by decision on the questions presented by the petition at this time.

WHEREFORE, for each and all reasons previously stated, the petition of Municipal Distributors Group for a writ of certiorari and its prayer for summary

reversal of the court below on the questions presented in the petition should be granted.

Respectfully submitted,

REUBEN GOLDBERG
LEO J. STEFFEN, JR.
1250 Connecticut Avenue
Washington, D. C. 20036

GEORGE E. MORROW
Union Planters National Bank Bldg.
Memphis, Tennessee 38103

CHARLES F. WHEATLEY, JR.
Watergate Office Building
2600 Virginia Avenue
Washington, D. C. 20037

Attorneys for Municipal Distributor Group

Nos. 669, 682-688, 697.

In the Supreme Court of the United States

OCTOBER TERM, 1970

SOUTHERN LOUISIANA AREA RATE CASES

MUNICIPAL DISTRIBUTOR GROUP, ET AL., PETITIONERS

v.

FEDERAL POWER COMMISSION, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE FEDERAL POWER COMMISSION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

RICHARD A. SOLOMON,
General Counsel,
Federal Power Commission,
Washington, D.C. 20426.

In the Supreme Court of the United States

OCTOBER TERM, 1970

Nos. 669, 680–685, 691, 692

SOUTHERN LOUISIANA AREA RATE CASES

MUNICIPAL DISTRIBUTOR GROUP, ET AL., PETITIONERS

v.

FEDERAL POWER COMMISSION, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE FEDERAL POWER COMMISSION

We file this supplemental memorandum to point out the following events which have occurred since the filing of the Commission's Brief in Opposition to the petitions for writs of certiorari in these cases:

1. On November 6, 1970, the United Distribution Companies [1] filed a proposed resolution on the merits

[1] The United Distribution Companies group consists of 32 distribution utilities serving more than ten million customers in twelve midwestern and eastern states. This group represents over 25 percent of the gas distribution operations in the United States.

409-284—70

of *Southern Louisiana I* and *II* with the Commission. The proposed resolution was developed at settlement conferences ordered by the presiding examiner in *Southern Louisiana II* (Tr. 1081) and open to all parties to the proceedings. The Commission has given notice of the proposal to all parties to *Southern Louisiana I* and *II* and has directed that any response to the proposal be filed with the Commission by December 11, 1970. The Commission has not yet considered the settlement proposal on the merits and cannot do so until all parties have had an opportunity to be heard.

To date, a substantial number of the parties in the instant cases, as well as the Commission's staff in its role as representative of the public interest, have filed answers in support of the proposed settlement. These supporters include most members of the Associated Gas Distributors,[2] all interstate pipelines purchasing interstate gas in the Southern Louisiana area and producers accounting for more than 70 percent of the interstate sales from that area. Only the New York Public Service Commission, the Municipal Distributor Group,[3] a few members of the Associated Gas Distributors and several producers have not indicated a willingness to support the proposal. They will, following any filing of objections with the Commission, have

[2] The Associated Gas Distributors group consists of gas distribution utilities along the eastern seaboard and its members supply over 11 percent of the gas distributed in the United States.

[3] The Municipal Distributor Group represents a group of distribution utilities supplying less than 2 percent of the gas distributed in the United States.

an opportunity to present evidence in opposition to the proposed resolution on the merits.

2. The Department of the Interior has announced, as anticipated (Commission's Brief in Opposition, p. 18, n. 6), that an oil and gas lease sale for Offshore Louisiana will take place on December 15, 1970 (35 Fed. Reg. 16417).

In view of these developments and the fact that several of the petitions filed in these cases have now been conditionally withdrawn,[1] we respectfully submit that the remaining petitions for writs of certiorari should be expeditiously denied; since some of the issues raised here also underlie the proposed settlement, any deferral of this Court's consideration would impede the further proceedings before the Commission.

ERWIN N. GRISWOLD,
Solicitor General.

GORDON GOOCH,
General Counsel,
Federal Power Commission.

NOVEMBER 1970.

---

[1] We are informed that, as of the date of this filing, only the Municipal Distributor Group (No. 669), The Continental Oil Company and the Mobil Oil Company (petitioners in No. 680), Bradco Properties, Inc. et al. (petitioners in No. 683), the City of Norwich (one of the petitioners in No. 691) and the New York Public Service Commission (No. 692) still desire that their respective petitions for writs of certiorari be granted.

[2] In this regard, it should be noted that the question referred to in the Reply of the New York Public Service Commission in No. 692, pp. 2–7, of where the responsibility lies for the natural gas shortage which the Commission's staff has found to exist is at issue in *Southern Louisiana II*. All parties have had an opportunity to present evidence on that issue during the proceedings before the Commission in that case.

CERTIORARI DENIED N.C.R.

U.S. GOVERNMENT PRINTING OFFICE: 1970